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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,367	03/09/2004	Guy J. Rackham	END920030163US1	2245
7590	06/08/2010		EXAMINER	
John R. Pivnichny IBM Corporation Dept IQ0A, Bldg. 40-3 1701 North Street Endicott, NY 13760				CHONG CRUZ, NADJA N
ART UNIT		PAPER NUMBER		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte GUY J. RACKHAM*

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Appeal 2010-001255  
Application 10/796,367  
Technology Center 3600

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Before DALE M. SHAW, *Division 2 Support Administrator.*

ORDER REMANDING APPEAL TO EXAMINER

This is a Director ordered remand under 37 CFR §41.35(c) for the matter identified below. Accordingly, the application is herewith being remanded to the Examiner.

This application was electronically received at the Board of Patent Appeals and Interferences on November 2, 2009. A Docketing Notice was mailed and Appeal No. 2010-001255 was assigned on November 24, 2009.

Claim 22 of the instant application contains functional language that may be indefinite under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph. *See Ex Parte Rodriguez*, 2009 WL 3756279 (BPAI 2009) and *Aristocrat Techs. Austl. Pty.*

Appeal 2010-001255  
Application 10/796,367

*Ltd. v. Int'l. Game Tech.*, 521 F.3d 1328 (Fed Cir. 2008). On September 2, 2008 the Deputy Commissioner for Patent Examination Policy, John J. Love, issued a memorandum entitled “Rejections under 35 U.S.C. 112, second paragraph, when examining means (or step) plus function claim limitations under 35 U.S.C. 112, sixth paragraph”, located at:  
[http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/section\\_112\\_6th\\_09\\_02\\_2008.pdf](http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/section_112_6th_09_02_2008.pdf). Thus, there is a question as to whether claim 22 and the claims which depend upon this claim, meet the requirements of being definite under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph.

Accordingly, it is

ORDERED that the application is remanded to the Examiner to determine if claim 22 and the claims which depend upon this claim, meet the requirements of 35 U.S.C. § 112, 2<sup>nd</sup> paragraph.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DMS/mls

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